

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, August 3, 2004 – 9:00 a.m. – Room W025 House Building

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
President Al Mansell
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire

Rep. Greg J. Curtis
Rep. James R. Gowans

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at www.le.utah.gov or by contacting the committee secretary at 538-1032. A recording of the meeting may also be available from the Office of Legislative Research and General Counsel.

1. Committee Business

Chair Ure called the meeting to order at 9:14 a.m.

MOTION: Rep. Curtis moved to replace "the Law Enforcement and Criminal Justice Interim Committee" with "Division of Emergency Services and Homeland Security" in Item #2 of the draft minutes of the July 6, 2004 meeting, and to approve the minutes with this change. The motion passed unanimously. Sen. Mayne was absent for the vote.

2. R590-230 Senior Protection in Annuity Transactions, Bulletin, May 1, 2004, p. 14

Rep Newbold introduced the issue. She expressed concern that the Insurance Department does not appear to have adequate statutory authority to provide the protections outlined in the rule.

Mr. Merwin Stewart, Commissioner, Department of Insurance, presented background information.

Mr. Neal Gooch, Deputy Commissioner, Department of Insurance, said that the basis for the rule is Section 31A-22-425, gives a general grant of authority to establish standards for life insurance and annuity products when recommendations of sale, or buyer's guides or disclosure documents are provided to the customer. He also discussed the authority provided in Sections 31A-23a-402 and 31A-23a-403.

MOTION: Pres. Mansell move that the committee move to the next item on the agenda. The motion passed unanimously.

3. Need for Rulemaking by the Motor Carrier Division

Chair Stephenson introduced the issue.

Mr. Richard Clasby, Director, Motor Carrier Division, UDOT (Utah Department of Transportation) distributed "Rulemaking Update by the Motor Carrier Division." He summarized background information

and the areas being reviewed for the drafting of rules to clarify: a) vehicle size, weight, and load restrictions; b) movement of houses and buildings; c) overweight or oversize permitted vehicle restrictions on certain highways; d) movement of mobile and manufactured homes; and e) pilot/escort driver and vehicle requirements. Mr. Clasby explained that the department determined in 1993 that rules were not needed in these areas and repealed the rules, but that the department now finds that rules are needed. He commented that the department hopes to have the rules completed by the first of 2005.

4. Committee Business

Rep. Ure introduced the issue of Pawn Shops.

Mr. Robert Jolley, Lobbyist, Utah Pawn Shop Association, distributed definitions provided in Section 59-12-102 and "R865 Tax Commission, Auditing." Mr. Jolley explained that currently a consumer who takes a loan at a pawn shop pays sales tax on the item used as collateral twice; first, when the item is purchased by the retailer, and second, when it is redeemed or repurchased from the pawn shop upon payment in full of the loan.

Ms. Pam Hendrickson, Commissioner, Utah Tax Commission, said that based on the pawn shop loan contract, the sale takes place when the facility sells the item, whether to the person who brought it in, or to someone else.

Ms. Lynn Solarczyk, Director of Legislative and Government Affairs, Utah Tax Commission, explained that the contract which was audited states that the seller conveys to the buyer free and clear legal and equitable title to the goods, the seller being the one who brings the goods in, and the buyer being the pawn shop. Ms. Solarczyk stated that title is conveyed at the first transaction, and the terms of the contract alone make it a sale under the sales tax code.

Ms. Solarczyk further explained that the sales tax code says an item is subject to sales tax if it is a conditional sale, suggesting that the definition of "sale" under the sales tax code may need to be reviewed.

MOTION: Pres. Mansell moved that the Committee send a letter to the Tax Commission requesting that the audit be placed on hold until May, 2005, giving the Legislature time to address the issue of defining the taxability of a redeemed product. Pres. Mansell also moved that the letter indicate that it is the opinion of the Committee that it is not the intent of the Legislature to tax pawned items that are redeemed. The motion passed unanimously.

Future meetings were scheduled for August 24, 2004 and September 7, 2004.

5. Adjourn

MOTION: Sen. Dmitrich moved to adjourn the meeting. The motion passed unanimously.

Chair Ure ruled the meeting adjourned at 10:39 a.m.